IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1417 OF 2002

Shivraj Ramkrishna Bhosale. .. Petitioner

Vs.

Noor Mohamad Gulab Mulani & Ors... Respondents

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Shri M.D.Angal for the Petitioner.

Shri S.R.Shinde, APP for the Respondent No.3.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 24th JANUARY, 2005.

P.C.

1. Heard the learned Advocate for the Petitioner. None present for the Respondent Nos.1 and 2. The learned APP present for the Respondent No.3.

2. The Petitioner challenges the proceedings in Criminal Case No.283 of 1999 on the file of the J.M.F.C., Sangli, which are initiated by the Respondent No.1 on account of dishonour of the cheque issued by the Petitioner, under Section 138 of the Negotiable Instruments Act. It is the case of the Petitioner that in terms of the agreement between the

parties, it is only after the delivery of the grapes to the Petitioner by the Respondent No.2, the Respondent No.1 could have encashed the cheque. At the same time, it is the contention of the Petitioner that in terms of the agreement between the parties, the Petitioner was required to make payment in advance to the growers of the grapes and thereafter collect the grapes which stored with the Respondent No.2 in the cold storage. Undisputedly, the cheque was issued in favour of the Respondent No.1 and consequent to the payment to the Respondent No.1, the grapes were to be collected by the Petitioner from the Respondent No.2. It is the contention of the Petitioner that the Respondent No.2 refused to deliver the grapes, and therefore, the Petitioner was not liable to pay the amount under the said cheque issued in favour of the Respondent No.1. The contention sought to be raised could, if proved, be perhaps a good defence to the complainant but the same can be entertained and adjudicated upon the analysis of the evidence to be led by the parties before the trial Court. It is too premature for this Court to arrive at any finding in that regard or in relation to the alleged absence of consideration for issuance of the cheque. Whether the liability of the Petitioner to the Respondent No.1 under the said cheque was legal or not, can be decided

only after the analysis of the evidence to be led by the parties. It is the contention of the Petitioner that there was suppression of fact regarding non-supply of the grapes by the Respondent No.2 and on that count, this Court can interfere in the proceedings and quash the same. Even for the purpose of arriving at the finding that there has been any suppression of the alleged fact, it would be necessary to analyse the evidence in order to ascertain whether the fact alleged is relevant for the decision in the matter, whether suppression thereof affects the decision or not, in a case under Section 138 of the Negotiable Instruments Act in relation to the cheque admittedly issued by a party, and therefore, such an exercise can be done only by the fact finding Court and not by the writ Court. On this count also, there is no case for interference in the matter.

3. Being so, there is no case made out by the Petitioner for interference in the impugned order in exercise of writ jurisdiction under Article 227 of the Constitution of India. Hence, the petition is rejected.

4. Certified copy be expedited.